IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9154 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANJI ALIAS KAU BHALUBHAI CHUNARA VAGRI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 12.6.2000 Annexure : A passed by Respondent No. 2 which he has passed in exercise of

powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on two I.P.C. Cases lodged against the petitioner detenu, and which are referred to in grounds of detention at Annexure : B. All the two cases are pending with the Investigating Officer for investigation. The detaining authority also placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the said statements of two anonymous witnesses on 10.6.2000 and passed an order of detention on 12.6.2000 and that order has been challenged in this writ petition.

3. Though Rule has been served upon respondent Nos.1 and 3, they have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in it. Here in this case, respondent no.2 has filed his affidavit-in-reply, in reply to main Writ Petition on 19th October, 2000 alongwith one annexure. They are taken on record.

4. Ms.Smita R.Patel, the learned advocate for the petitioner has argued that looking to the grounds of detention, while passing an order of detention, the detaining authority has considered less drastic remedy under Secs.56 and 57 of the Bombay Police Act. She has further argued that the detaining authority ought not to have taken into consideration that less drastic remedy because that remedy was not available to him because for passing an order under Sec.57(c), it is required that the petitioner detenu is convicted atleast in two cases. There is no affidavit to that effect the detenu has been convicted in two cases. She has further argued that the detaining authority has taken into consideration less drastic remedy which is not available to him for passing an order of detention, and therefore, this is a case of total non-application of mind of the detaining authority.

5. Ms. Smita R.Patel, learned advocate for the petitioner in support of her arguments has cited an

authority in case of JAYANTI NENUMEL RAMNANI VS. COMMISSIONER OF POLICE, RAJKOT, reported in 2000(2) G.L.H. 166, wherein it has been held that the question does not arise for considering less drastic remedy, when it was not available to the detaining authority. He has taken into consideration the provisions of Sec.56 and 57 of the Bombay Police Act, which he could not have taken into consideration as the petitioner has not been convicted in atleast two cases. This fact itself shows non-application of mind on the part of the detaining authority. The facts of the present case squarely fall within the four corners of case of Jayanti Nenumel Ramnani (supra) which is cited by Ms.Smita Patel.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 12.6.2000 passed by Respondent No. 2 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

20/10/2000 (H.H.MEHTA,J.)
ccshah